

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2017

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Work and Pensions (DWP) regarding the Universal Credit Programme Board and the 'information packs' supplied to them.
2. The Commissioner's decision is that DWP has breached section 10(1) of the FOIA as it has failed to give a substantive response to the request within the reasonable timeframe specified by section 10(3).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - DWP must issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 July 2017, the complainant wrote to the DWP via whatdotheyknow.com and requested information in the following terms:

"In its response dated 25 April 2017 (FOI ref: FoI 5067, ICO reference – FS50637830) the Department referred to 3 activity streams in respect of the management of the Universal Credit programme ("UC"):

- Governance and Project Management*
- Transformation and Planning*
- UC Product Development*

RFI1 - Please confirm if these constitute all of the activity streams for UC? If there are more than these 3 activity streams please disclose what they are called and their scope?

RFI2 – Who sits on the UC Programme Board and how frequently does it meet?

In my RFI of 10 April 2017 I asked:

"RFI3 - What deliverables (I assume documents or some sort) are provided to the UCP Programme Board to allow them to review progress at the programme level and give direction/guidance to the team? (Please note I want to know what the deliverables are not their contents). "

The Department responded:

"The response to RF1 above gives details about how the Universal Credit programme reviews progress. The Board also checks progress by review of specific tasks and actions. Status is assessed by balancing the development of building digital features, the readiness of operations and the latest data, underpinned by scrutiny of the Programme from the Infrastructure and Projects Authority. The Programme Board also evaluates the critical activity in the next 6 months and the relative priorities of these activities.

All of this is reinforced by the business case process, overseen by the Treasury, which sets the parameters for the Programme in terms of inputs, outputs and the outcomes sought for the reform.

In addition, the Programme Board provides second line assurance to the Senior Responsible Owner, who is accountable for the delivery of the Programme to Parliament under responsibilities outlined in paragraph 5.6 of the Ministerial Code. The Programme Board draws on a number of sources in order to discharge these second line assurance functions. "

As there is no mention of what deliverables (i.e. documents) are provided to the UC Programme Board, the requested information was not supplied. It isn't credible that the members of the UC Programme Board would have to individually source the information from the "number of sources" referenced above. The relevant information would

normally be provided to members of the board for each meeting. This would usually take the form of a "pack" of some kind, either in paper form or electronically. In addition to the "pack" it is not unusual for presentations to be made to a programme board by members of the programme team.

RFI3 – Please disclose the "pack of information" provided to the UC programme board members for the 3 most recent UC programme board meetings. If available also include any presentations made to the board or documents handed to the board "on the day".

6. DWP acknowledged the request on the same day.
7. On 25 July 2017 DWP informed the complainant they could expect a reply by 16 August 2017.
8. On 16 August 2017 DWP wrote to the complainant and stated that it did hold information falling within the terms of the request but that they would need more time to consider the request.
9. They advised the complainant that the information requested fell under the exemption at section 36(2)(b) and (c) of the FOIA, prejudice to effective conduct of public affairs, and that it would have to consider the balance of the public interest in relation to the request.
10. They further advised the complainant that by virtue of section 10(3) that they did not have to comply with the request until such a time as was reasonable in the circumstances. DWP said they hoped to let the complainant have a response by 14 September 2017.
11. DWP contacted the complainant again on 14 September 2017 and 12 October 2017 to say that they had not reached a decision on the balance of the public interest.

Scope of the case

12. The complainant contacted the Commissioner on 15 September 2017 to complain about the way his request for information had been handled.
13. Following receipt of the complaint the Commissioner contacted DWP, reminding it of its responsibilities and asking it to respond to the complainant within 10 working days.
14. Despite this intervention DWP has failed to respond to the complainant.

Reasons for decision

15. Section 10(1) of the FOIA states that an authority must comply with section 1(1) of the FOIA '...promptly and in any event not later than the twentieth working day following the date of receipt'. However, section 10(3) enables an authority to extend the 20 working day limit up to a 'reasonable' time in cases where the public interest test attached to the application of a qualified exemption is being considered.
16. The FOIA does not define what constitutes a 'reasonable' extension of time. It is the view of the Commissioner that an authority should normally take no more than an additional 20 working days to consider the public interest test, meaning that the total time spent dealing with the request should not exceed 40 working days.
17. The Commissioner has found that the time taken to produce a substantive response to this request considerably exceeds the 40 working days and is therefore not reasonable. She has therefore decided that DWP has breached section 10(1) of the FOIA.

Right of appeal

18. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alun Johnson
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